IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 384 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO No

2. To be referred to the Reporter or not? No : No

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO No

5. Whether it is to be circulated to the Civil Judge? No : No

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STATE OF GUJARAT

Versus

HIMANSHU KANJIBHAI VAGHELA

Appearance:

Shri L.R.Pujari, A.P.P. for Petitioner

MR JV JAPEE for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 30/08/2000

ORAL JUDGEMENT

1. This revision has been filed by the State of Gujarat against the order dated 5.6.1999 of Additional Sessions Judge, Gandhinagar partly allowing the application of the prosecution under Section 311 of the

Code of Criminal Procedure and partly rejecting the same.

2. In response to notice Shri J.V.Japee appeared for the respondent - accused and has filed counter Affidavit.

3. Learned A.P.P. Shri L.R.Pujari and Shri J.P.Japee for the respondent have been heard and the impugned order has been examined. After going through the impugned order I do not find any ground for admitting this Revision for further hearing.

4. Criminal Case against the respondent was initiated in 1996. The statement of the prosecutrix was recorded in August, 1997. Cross examination of the prosecutrix could not be completed. Thereafter for months together she did not appear for further cross examination. Adjournments were granted by the Court below to enable the prosecution to produce prosecutrix for cross examination and for this exercise two years period was lost. Even then the prosecutrix did not remain present. In these circumstances the Court below had no option but to close the prosecution evidence. However, in 1999 when the impugned order was passed the prosecutrix was presented before the Court and the Court below permitted the prosecution to produce the prosecutrix for further cross examination. Her cross examination was completed and the prosecution evidence was closed. The statement of the accused u/s. 313 Cr.P.C. was also recorded. Then the application u/s.311 Cr.P.C. was moved by the prosecution for permission to examine the Talati in respect of entry and certificate issued by the Sarpanch of Gram Panchayat from Birth and Death Register.

5. Learned Counsel for the revisionist has admitted that the prosecutrix was never declared hostile and her statement supports the prosecution story. As such examination of Executive Magistrate to prove the statement of the prosecutrix recorded by him u/s. 164 Cr.P.C. is hardly essential. As such if the Court below refused to grant permission to examine the Talati it committed no legal error.

6. So far as filing of Certificate of Birth is concerned the Court below has already granted permission with observation that if the complainant side is desirous to produce on record the certificate issued by the Appropriate Authority the Court will consider the same after hearing both sides. Needless to say that the entries made in the Birth & Death Register are in the nature of entries in public record and a certified copy

of such public record issued by the competent Authority or the official will always be admissible in evidence. Consequently the prosecution can file certified copy of Birth & Death Register issued by the competent Authority or the official which shall be accepted by the Addl. Sessions Judge, Gandhinagar. Thereafter further statement of the accused shall be recorded u/s.313 Cr.P.C. and thereafter the trial shall be concluded in accordance with law.

7. With these observations the revision is dismissed.

sd/-

Date : August 30, 2000 (D. C. Srivastava, J.)

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